86-56

No. .....

Supreme Court, U.S.
FILED
JUL 15 1986
JOSEPH F. SPANIOL, JR.
CLERK

In The

Supreme Court of the United States

October Term, 1986

JERRY D. SHOECRAFT,

Appellant,

v.

CATHOLIC SOCIAL SERVICES BUREAU, INCORPORATED, A NON-PROFIT NEBRASKA CORPORATION: JOHN AND MARY DOE; DEPARTMENT OF SOCIAL SERVICES, STATE OF NEBRASKA,

Appellees.

APPEAL FROM THE SUPREME COURT OF THE STATE OF NEBRASKA

JURISDICTIONAL STATEMENT

ROGER C. LOTT,
521 South 14th Street
500 Executive Bldg.
Lincoln, NE 68508
(402) 476-8005

COCKLE LAW BRIEF PRINTING CO., (800) 228-8845 (tone) 75
or call collect (402) 342-2831

QUESTIONS PRESENTED

1. Whether Neb. Rev. Stat. §§ 43-104.01 through and including 43-106 (provisions set out in full at Appendix B, p. App. 15 deprived the Appellant, an unwed father, of due process by failing to provide him with notice and an opportunity to be heard, reasonable to the circumstances of the case, before terminating his parental right and allowing the adoption proceeding of his natural son, in violation of the Due Process Clause of the 14th Amendment to the United States Constitution.

2. Whether a statutory five day procedural limitation for filing a notice of intent to claim paternity imposed on an unwed father by Neb. Rev. Stat. § 43-104.02 violates the equal protection guarantees of the United States Constitution, when failure to meet this limitation forever precludes an unwed father from asserting any parental rights or performing any parental duties, even though no other class of parents including unwed mothers who have never had custody of their children are so limited and may veto an adoption absent abandonment of the child.

3. Whether the fundamental right of a parent to the care and custody of his child was violated by the Nebraska Supreme Court's failure to provide notice of the impending termination of parental rights and an opportunity to be heard in connection therewith prior to the termination of appellant's parental rights.

4. Whether the Nebraska Supreme Court erred in its application of strict scrutiny by failing to consider whether there are less drastic means to achieve the desired purposes of the statutory scheme and still protect the governmental interests at stake.

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES iii

OPINIONS BELOW 1

GROUNDS OF JURISDICTION OF SUPREME COURT 2

CONSTITUTIONAL PROVISIONS AND STATUTES 3

STATEMENT OF THE CASE 5

SUBSTANTIALITY OF FEDERAL QUESTIONS ... 8

APPENDICES:

A. Opinion of Nebraska Supreme Court ..... App. 1

B. Nebraska Statutes Dealing with Adoption and Unwed Fathers ..... App. 15

C. Order of District Court of Lancaster County, Nebraska at Trial ..... App. 18

D. Notice of Appeal to Supreme Court of United States ..... App. 21

E. Notice of Intent to Claim Paternity Filed by Shoecraft ..... App. 25

F. Nebraska Statute Dealing with Termination of Parental Rights ..... App. 26

G. Examples of Other State Statutes Providing Notice to Putative Fathers ..... App. 27

H. Uniform Parentage Act Provisions ..... App. 29

TABLE OF AUTHORITIES

Page

CASES:

Caban v. Mohammad, 441 U.S. 380 (1979) 9, 10, 11

Lehr v. Robertson, 103 S. Ct. 2985 (1983) 10, 12

Quilloin v. Walcott, 434 U.S. 246 (1978) 8, 9, 11

Shoecraft v. Catholic Social Services et al, 222 Neb. 574, — N.W.2d — (1986) 1, 8

Stanley v. Illinois, 405 U.S. 645 (1972) 8, 9, 11, 13, 14

STATUTES:

28 U.S.C. § 1257(2) 3

Neb. Rev. Stat. § 43-104 4

Neb. Rev. Stat. § 43-104.01 through and including § 43-106 ..... 2, 4, 7, 13

Neb. Rev. Stat. § 43-291 13

Uniform Parentage Act, 9A U.L.A. § 24 13

CONSTITUTION:

Fourteenth Amendment, U.S. Constitution 3, 7, 14

No. .....

—o—

In The
Supreme Court of the United States
October Term, 1986

—o—

JERRY D. SHOECRAFT,

Appellant,

v.

CATHOLIC SOCIAL SERVICES BUREAU, INCORPORATED, A NON-PROFIT NEBRASKA CORPORATION: JOHN AND MARY DOE; DEPARTMENT OF SOCIAL SERVICES, STATE OF NEBRASKA,

Appellees.

—o—

Pursuant to Rules 12.2 and 15 of the Rules of the Supreme Court of the United States, Appellant herein, Jerry D. Shoecraft, files this statement of the basis on which it is contended that the Supreme Court of the United States has jurisdiction on direct appeal to review the final decision rendered by the Nebraska Supreme Court, and that the Court should exercise jurisdiction in this case.

—o—

OPINIONS BELOW

The opinion delivered by the Nebraska Supreme Court may be found at 222 Neb. 574, — N.W.2d — (1986) which is set forth at Appendix A, p. App. 1.

The decision of the District Court of Lancaster County which was reversed by the Nebraska Supreme Court is set forth at Appendix C, p. App. 18.

———o———

GROUNDS OF JURISDICTION OF SUPREME COURT

This action began with a petition for a writ of habeas corpus by an unwed father challenging the custody determination of his newborn illegitimate son who was relinquished by the mother for adoption shortly after birth. The defendants were the adoption agency which had received the mother's relinquishment, and John and Mary Doe, the unknown prospective adoptive parents chosen by the adoption agency.

The statutory scheme represented by NEB. REV. STAT. §§ 43-104.01 through and including 43-106 was challenged on the constitutional grounds that they violated the appellant's due process and equal protection guarantees under the Federal Constitution. This statutory scheme is included herein as Appendix B, p. App. 15.

Specifically at issue is the statutory provision requiring an unwed father to submit with the proper agency a notice of intent to claim paternity within five days of the child's birth. Failure to file the claim results in termination of the father's parental rights even though no notice of the birth or of adoption proceedings is provided to the father. Further, this statutory limitation forever precludes an unwed father from asserting any parental rights if it is not met.

The appeal herein is taken from the final decision made and entered in the Nebraska Supreme Court. The entire opinion is set forth in Appendix A, p. App. 1. It was in the Nebraska Supreme Court that the statutory scheme was upheld as constitutional and not violative of Shoecraft's Federal Constitutional rights to due process and equal protection rights, as guaranteed by the Fourteenth Amendment to the Constitution of the United States.

The Supreme Court has jurisdiction to review the Nebraska Supreme Court's final order by direct appeal pursuant to Title 28 of the United States Code, Section 1257(2).

The final order was made and entered April 25, 1986 and on May 15, 1986 a timely Notice of Appeal on behalf of the Appellant was filed in the Nebraska Supreme Court and a copy was delivered to the District Court of Lancaster County, Nebraska. A copy of the Notice of Appeal is attached and may be found at Appendix D, p App. 21.

———o———

CONSTITUTIONAL PROVISIONS AND STATUES

Fourteenth Amendment to the United States Constitution:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

NEB. REV. STAT § 43-104:

> No adoption shall be decreed unless the petition therefore is accompanied by written consents thereto executed by (1) the minor child, if over fourteen years of age, or the adult child of the adopting person's spouse, (2) any district court or separate juvenile court in the State of Nebraska having jurisdiction of the custody of a minor child by virtue of divorce proceedings had in any district court or separate juvenile court in the State of Nebraska, and (3) both parents, if living; the surviving parent of a child born in lawful wedlock; or, subject to the provisions of sections 43-104.02 to 43-104.06. The mother of a child born out of wedlock; except that consent shall not be required of any parent who shall (a) have relinquished the child for adoption by a written instrument; (b) have abandoned the child for at least six months next preceding the filing of the adoption petition; (c) have been deprived of his or her parental rights to such child by the order of any court of competent jurisdiction, or prior to July 13, 1967, have been deprived of the custody of such child by an order of any juvenile court of competent jurisdiction by reason of such child having been declared a dependent or neglected child, within the provisions of sections 45-201 to 43-227; or (d) be incapable of consenting.

NEB. REV. STAT. § 43-104.01 through and including 43-106:

> Provisions of which are set forth at Appendix B, p. App. 15.

———o———

STATEMENT OF THE CASE

The facts of the case underlying this appeal are as follows:

Appellant, Shoecraft, is the undisputed father of a baby boy born to Sheri Davis on February 19, 1985 in Grand Island, Nebraska (44:12-21). Shoecraft and Mrs. Davis were not at the time of the birth and have never been married to one another.

The parents maintained contact with each other throughout the pregnancy. Several discussions were had regarding the future of their son. Shoecraft testified that Ms. Davis had not told him of a final decision to have the child adopted, while Ms. Davis testified she had made such a decision five or six months before the birth (47:19). Prior to the child's birth, Shoecraft was under the impression that he had no rights at all in relation to the adoption (4:23-5:2). Ms. Davis felt the choice was completely hers to make as well (52:14-19). She further testified that she felt there was nothing Shoecraft could do regarding the child without her consent (55:3).

On the morning of the child's birth Ms. Davis contacted Shoecraft and shared the news (55:36). Shortly thereafter Shoecraft traveled to Grand Island, Nebraska to see Ms. Davis and his son. During that meeting, Ms. Davis did not tell Shoecraft that she intended to give up the child for adoption, Shoecraft testified (32:25-33:3). It wasn't until several days later that Shoecraft was informed of the decision by Ms. Davis in a phone conversation while Shoecraft was out of the state of Nebraska (34:14-35:5).

lish that he "is a fit person, is able to properly care for the child, and that the child's best interests will be served by granting custody" in order to successfully contest the proposed relinquishment. § 43-104.06(1).

The section appears to apply only where there is an adoption proceeding after relinquishment by the mother and does not limit the rights of a custodial unwed mother to seek support for the child at any time during the minority of the child.

The Legislature, in the passage of §§ 43-104.02 et seq., was concerned about the problems facing an unwed mother as to the retention of custody of the child or the relinquishment of the child to an agency for placement in an appropriate home. The 5-day period after birth was selected, in the words of the introducer, "primarily because this is pretty much a standard length of time a child and the mother might be kept in the hospital anyway." Judiciary Committee Hearing, L.B. 224, 84th Leg., 1st Sess. 2 (Jan. 29, 1975) (statement of Sen. Anderson). An unwed mother would then know at the time she is likely to be released from the hospital whether the father will step forward, claim his own flesh and blood, and assume the responsibilities he biologically created. If not, the mother may then make the painful decision alone and not be left in the terrible limbo of growing attachment and love for the child, awaiting either the outcome of a judicial proceeding with its attendant notoriety or the decision of the amorous Hamlet in the wings, pondering whether he should assume his responsibility.

It is further obvious that the Legislature exercised a judgment favoring adoption of children of unwed couples

as soon as possible after birth, concluding that the placement of the child in a home with persons anxious to have, love, and rear the child is to be preferred over a battleground where the mother must either depend on social agency support or on the outcome of a judicial support proceeding to compel the father to assume his responsibility.

The Legislature also considered (in view of the extended testimony) the views of the licensed child placement agencies that rapid determination of the rights, if any, of an unwed father to object to a relinquishment and subsequent adoption is in the best interests of the child, the relinquishing mother, and of the prospective adoptive parents. That prospective adoptive parents would assume custody of a newborn with the prospect of later having to surrender the child is questionable. That the Legislature accomplished those goals with the passage of the act is clear. It is further clear that the problems of unwed births and adoptions are legitimate concerns of the Legislature.

In consideration of the countervailing claims of this appellee father, we must note that, until after the birth, he exhibited (at least financially) no responsibility for the child or the mother. This is not a case where he lived with the child and nurtured and supported it and the mother. Thus, his rights, as Justice Marshall observed in *Quilloin v. Walcott,* 434 U.S. 246, 256, 98 S. Ct. 549, 54 L. Ed. 2d 511 (1978), "are readily distinguishable from those of a separated or divorced father, and [we] accordingly believe that the State could permissibly give appellant less veto authority than it provides to a married father."

We are not impressed with the excuse that the appellee father did not know of the 5-day limitation. In this matter he is presumed, as are all citizens, to know the law, Statutes of limitation bar evenly the claims of the wary and the unwary and the just and the unjust.

As we have concluded that the statute as applied is not unconstitutional, the cause is remanded with directions to dismiss the application for writ of habeas corpus.

REVERSED AND REMANDED WITH DIRECTIONS TO DISMISS.

KRIVOSHA, C.J., dissenting.

I must respectfully dissent from the majority opinion in this case. I do so because, in my view, Neb. Rev. Stat. § 43-104.02 (Reissue 1984) violates both U.S. Const. amend. XIV, § 1, and Neb. Const. art. I, § 3.

While I concede that the cases decided by the U.S. Supreme Court on this issue have not always been consistent, I believe, nevertheless, that a common thread does run throughout the cases. In my view, pulling out that common thread unravels the validity of the statute in question.

The majority opinion argues that the purpose of the act is to facilitate the adoption of children born out of wedlock. In order to facilitate adoptions the act treats fathers of children born out of wedlock differently than mothers. I believe the U.S. Supreme Court, in its various decisions, has held that objectionable. In *Caban v. Mohammed,* 441 U.S. 380, 99 S. Ct. 1760, 60 L. Ed. 2d 297 (1979), the U.S. Supreme Court, in striking down a New York statute which granted an unwed mother the author-

ity to block the adoption of her child simply by withholding her consent but did not give an unwed father a similar right, said at 388: "Gender-based distinctions 'must serve important governmental objectives and must be substantially related to achievement of those objectives' in order to withstand judicial scrutiny under the Equal Protection Clause." The Court went on further to say at 389: "Contrary to appellees' argument and to the apparent presumption underlying § 111, maternal and paternal roles are not invariably different in importance." The State of New York in *Caban, supra,* as is true in the instant case, argued that this cutting off of rights was critical in order to assist in bringing about adoptions. In rejecting that argument the U.S. Supreme Court said in *Caban* at 391:

> The State's interest in providing for the well-being of illegitimate children is an important one. We do not question that the best interests of such children often may require their adoption into new families who will give them the stability of a normal, two-parent home. Moreover, adoption will remove the stigma under which illegitimate children suffer. But the unquestioned right of the State to further these desirable ends by legislation is not in itself sufficient to justify the gender-based distinction of § 111. Rather, under the relevant cases applying the Equal Protection Clause it must be shown that the distinction is structured reasonably to further these ends. As we repeated in *Reed v. Reed,* 104 U.S., at 76, such a statutory "classification 'must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike.' [Citation omitted.]"

The *Caban* Court went on to say at 391-92:

> We find that the distinction in § 111 between unmarried mothers and unmarried fathers, as illustrated by this case, does not bear a substantial relation to the State's interest in providing adoptive homes for its illegitimate children. It may be that, given the opportunity, some unwed fathers would prevent the adoption of their illegitimate children. This impediment to adoption usually is the result of a natural parental interest shared by both genders alike; it is not a manifestation of any profound difference between the affection and concern of mothers and fathers for their children. Neither the State nor the appellees have argued that unwed fathers are more likely to object to the adoption of their children than are unwed mothers; nor is there any self-evident reason why as a class they would be.

Similarly, in *Stanley v. Illinois,* 405 U.S. 645, 92 S. Ct. 1208, 31 L. Ed. 2d 551 (1972), the U.S. Supreme Court declared unconstitutional an Illinois statute under which an unwed father is not included in the statutory definition of "parent" and thus is subject to being deprived of the custody of his illegitimate children by dependency proceedings in which he is not entitled to a hearing as to his fitness as a parent, but, in effect, is presumed to be unfit. In declaring the act unconstitutional the U.S. Supreme Court said in *Stanley, supra* at 656:

> Despite *Bell* and *Carrington,* it may be argued that unmarried fathers are so seldom fit that Illinois need not undergo the administrative inconvenience of inquiry in any case, including Stanley's. The establishment of prompt efficacious procedures to achieve legitimate state ends is a proper state interest worthy of cognizance in constitutional adjudication. But the Constitution recognizes higher values than speed and efficiency. Indeed, one might fairly say of the Bill

> of Rights in general, and the Due Process Clause in particular, that they were designed to protect the fragile values of a vulnerable citizenry from the overbearing concern for efficiency and efficacy that may characterize praiseworthy government officials no less, and perhaps more, than mediocre ones.

And, further, in *Stanley* at 658 the Court said:

> The State of Illinois assumes custody of the children of married parents, divorced parents, and unmarried mothers only after a hearing and proof of neglect. The children of unmarried fathers, however, are declared dependent children without a hearing on parental fitness and without proof of neglect. Stanley's claim in the state courts and here is that failure to afford him a hearing on his parental qualifications while extending it to other parents denied him equal protection of the laws. We have concluded that all Illinois parents are constitutionally entitled to a hearing on their fitness before their children are removed from their custody. It follows that denying such a hearing to Stanley and those like him while granting it to other Illinois parents is inescapably contrary to the Equal Protection Clause.

While it is true that in the instant case the statute does not automatically deny the father the right to notice and hearing, nevertheless it does seek to accomplish a similar end. The statute requires that the father must, within 5 days after birth, acknowledge paternity in a narrow, limited manner, to wit, by filling out a form provided by the Department of Social Services. The father must also file the form with the Department of Social Services. In my view this statutory scheme unconstitutionally discriminates against the father.

This 5-day filing requirement is, in my view, a denial of equal protection. For a host of reasons, one may intend

to acknowledge paternity, pay the hospital bills, hand out cigars, and tell the world of the birth of a child, and yet, unless the individual can find the form specifically prescribed by the Department of Social Services and cause that form to be filed, presumably in Lincoln, within 5 days after birth, if the mother unilaterally chooses to place the child for adoption, the father is forever precluded from making any claim to the child. Moreover, should the unilateral decision to permit adoption to take place occur at some later time, the father is forever barred from receiving any notice or other due process. In the instant case the putative father filed the proper document with the proper agency 9 days after birth. Yet, we forever bar his rights because the filing was 4 days late.

I recognize that attempting to chart a course that will place a marker on an appropriate cutoff date is extremely dangerous. Nevertheless, I believe that setting a 5-day limit should be recognized by anyone as being too short. We even permit certain buyers of goods 3 days in which to rescind a purchase order. See Neb. Rev. Stat. § 69-1603 (Reissue 1981).

Furthermore, the provisions of § 43-104.02 are wholly inconsistent with other provisions of the law still in full force and effect in Nebraska. Neb. Rev. Stat. § 13-109 (Reissue 1983) provides:

> A person may state in writing that he is the father of a child or perform acts, such as furnishing of support, which reasonably indicate that he considers himself to be the father of such child, and in such case he shall be considered to have acknowledged the paternity of such child.

And Neb. Rev. Stat. § 13-102 (Reissue 1983) provides that the father of a child whose paternity is established either

by judicial proceedings or by acknowledgment shall be liable for its support to the same extent and in the same manner as the father of a child born in lawful wedlock is liable for his child's support. The net effect is to say that even though the father may acknowledge in writing that he is in fact the father and thereby remain liable for the child's support, he nevertheless is not entitled to any rights insofar as the adoption of his child is concerned unless he has, within 5 days of the child's birth, made that writing on a form prescribed by the Nebraska Department of Social Services. Even then the inconsistencies do not end. While the father has but 5 days under § 43-104.02 to establish his paternity, the mother has 4 years. See Neb. Rev. Stat. § 13-111 (Reissue 1983). Even though the mother may determine not to relinquish the child for a period of 4 years and even though the father may acknowledge in writing, though not on the proper form, that he is the father, and even though he may provide support, nevertheless if the magic writing has not occurred on the prescribed form and been properly filed within 5 days of birth, all of the mother's rights continue, but the father's rights are terminated.

Even after the father's rights are so quickly terminated, the adoption may not, under Nebraska law, proceed. Before a child may be adopted, the child must reside with the adoptive parents for at least 6 months. See Neb. Rev. Stat. § 43-109 (Reissue 1984). While, indeed, it can be argued that most adoptive parents who take a child into their home believe that, at the completion of 6 months, the adoption will become final, nevertheless the statute makes no such assurances.

It is difficult to conceive why, if the parties first married and the father then immediately left, a period of 6 months must expire before abandonment can be established, but if the parties failed to marry before the child was born and the father did not leave, after 5 days he could be denied any right.

The act under attack does not require that the father provide any support, either financially or emotionally, in order to acquire rights. All he need do is file a prescribed form within 5 days. That strikes me as being unreasonable.

The majority opinion observes that the appellee father in this case exhibited no financial responsibility for the child or the mother prior to birth. The majority observes:

> This is not a case where he lived with the child and nurtured and supported it and the mother. Thus, his rights, as Justice Marshall observed in *Quilloin v. Walcott,* 434 U.S. 246, 256, 98 S. Ct. 549, 54 L. Ed. 2d 511 (1978), "are readily distinguishable from those of a separated or divorced father, and [we] accordingly believe that the State could permissibly give appellant less veto authority than it provides to a married father."

But how can this father, or any father, under § 43-104.02, live with the child, nurture it, and support it if his rights to the child can be terminated during the time that the mother and child are in the hospital and before he is afforded any opportunity to establish those necessary ties?

In my view the provisions of § 43-104.02 do not withstand strict scrutiny. I would have affirmed the decision of the district court which found the act unconstitutional.

APPENDIX B

NEBRASKA STATUTES DEALING WITH ADOPTION AND UNWED FATHERS

43-104.01. *Adoption; act; applicability.* Section 43-104 shall apply to any adoption action pending in any court on March 1, 1971, which has not proceeded to final judgment.

43-104.02. *Adoption; child born out of wedlock; relinquishment or consent requirements; paternity claim; notice; contents.* (1) Relinquishment or consent for the purpose of adoption given only by a mother of a child born out of wedlock pursuant to section 43-104 shall be sufficient to place the child for adoption and the rights of any alleged father shall not be recognized thereafter in any court unless the person claiming to be the father of the child has filed with the Department of Social Services on forms provided by the department,within five days after the birth of such child, a notice of intent to claim paternity.

(2) The notice shall contain the claimant's name and address, the name and last-known address of the mother, and the month and year of the birth or the expected birth of the child.

43-104.03. *Paternity claim; notice; to whom given; effect.* Within three days after the filing of a notice to claim paternity, the Director of Social Services shall cause a certified copy of such notice to be mailed by certified mail to (1) the mother or prospective mother of such child at the last-known address shown on the notice of intent to claim paternity, or (2) an agent specifically designated in writing by the mother or prospective mother to receive such notice. The notice shall be admissible in any action for paternity

under sections 43-1401 to 43-1413, and shall estop the claimant from denying his paternity of such child thereafter and shall contain language that he acknowledges liability for contribution to the support and education of the child after its birth and for contribution to the pregnancy-related medical expenses of the mother.

43-104.04. *Paternity claim; failure to file notice; effect.* If a notice of paternity is not filed within five days, the mother of a child born out of wedlock or an agent specifically designated in writing by the mother may request, and the Department of Social Services shall supply, a certificate that no notice of intent to claim paternity has been filed with the department and the filing of such certificate pursuant to section 43-102 shall eliminate the need or necessity of a consent or relinquishment for adoption by the natural father of such child.

43-104.05. *Paternity claim; notice; filed; petition for adjudication of paternity; hearing.* If a notice of intent to claim paternity is filed within five days after the birth of such child, either the claimant-father, the mother, or her agent specifically designated in writing may file a petition in the county court in the county where such child is a resident for an adjudication of the claim of paternity. After the filing of such petition, the court shall set a hearing date upon proper notice to the parties not less than ten nor more than twenty days after such filing. If the mother contests the claim of paternity, the court shall take such testimony as shall enable it to determine the facts.

43-104.06. *Paternity claim; contest by claimant; court; findings; relinquishment of child to placement agency;*

when. (1) If the claimant seeks to oppose any proposed relinquishment of a child by the mother and requests custody of the child, the court shall inquire into the fitness of the claimant, his ability to properly care for the child, and whether the best interests of the child will be served by granting custody to the claimant. Only upon the appointment of a guardian ad litem for the child, and a finding that the claimant is a fit person, is able to properly care for the child, and that the child's best interests will be served by granting custody to the claimant, shall custody be granted to the claimant.

(2) Upon relinquishment by the mother to a child placement agency licensed by the State of Nebraska, or upon a finding that the child's best interests would not be served by granting custody to the claimant, together with the recommendation by the guardian ad litem, and a finding that termination of the rights of the mother and the father is in the best interests of the child, the court shall terminate the rights of the mother and father and confer such rights upon the licensed child placement agency to whom the relinquishment has been given.

APPENDIX C

ORDER OF DISTRICT COURT AT TRIAL
IN THE DISTRICT COURT OF
LANCASTER COUNTY, NEBRASKA

DOCKET 391 PAGE 287

JERRY D. SHOECRAFT,

Plaintiff,

vs.

CATHOLIC SOCIAL SERVICES BUREAU,
INCORPORATED, A Non-Profit
Nebraska Corporation, et. al.,

Defendants.

FINAL ORDER

(Filed July 20, 1985)

This matter came before the Court upon the Motion filed herein by and on behalf of defendants JOHN DOE and MARY DOE, and on the Court's own motion.

All counsel were present; arguments and briefs were presented. The Court being fully advised, now finds and adjudges:

1. That the Court adheres to, reaffirms, and makes the declaratory determination, as set forth in the Court's Order of June 14, 1985, that Sections 43-1401 et. seq. *Neb. Rev. Stat.* are unconstitutional to the extent (but only to the extent) of the five day limit appearing in Section 43-104.02 for the filing by a person claiming to be the father of the child of a notice of intent to claim paternity; the Court does expressly declare and determine as the judgment of this Court that the notice of intent to claim paternity filed by plaintiff shall be considered and treated

as timely filed although not filed within five days after the birth of the child in question.

2. That upon further consideration the Court concludes that this Court should not undertake any further proceedings or retain or exercise further jurisdiction herein for the reason that any further proceedings (other than appeal from the order and judgment of this Court) are properly vested with the appropriate County Court under the provisions of Section 43-1401 (sic) et. seq., *Neb. Rev. Stat.*, the five day limit being severable from the remaining portions of that statute.

3. That the last full paragraph of the Order of June 14, 1985 should be vacated and by reason thereof and by this Final Order shall be a final and appealable declaratory determination and Order of this Court.

4. A Guardian Ad Litem fee should be taxed to Lancaster County as herein ordered. Each party should pay his, her or its own costs.

IT IS THEREFORE ORDERED AND ADJUDGED:

1. The Court does declare and determine that Section 43-1401 et. seq., *Neb. Rev. Stat.* are unconstitutional to the extent (but only to the extent) of the five day limit appearing in Section 43-104.02 for the filing by a person claiming to be the father of the child of a notice of intent to claim paternity, for the reasons stated in the previous order of the Court under date of June 14, 1985. The Court does expressly declare and determine that the notice of intent to claim paternity filed by plaintiff shall be considered and treated as timely filed although not filed within five days after the birth of the child in question.

2. The Court further determines that no further proceedings should be undertaken in this Court and that this Court should not exercise further jurisdiction herein for the reason that any further proceedings (other than appeal from the order and judgment of this Court) are properly vested with the appropriate County Court under the provisions of Section 43-1401 et. seq., *Neb. Rev. Stat.*

3. The last full paragraph of the order of June 14, 1985 is vacated and the Court does declare and determine that this Court reserves no further jurisdiction over any other aspects of the matter and that this Final Order entered this date shall be a final and appealable declaratory determination and order of this Court.

4. Each party shall pay his, her or its own costs. A Guardian Ad Litem fee is awarded to John Hurd, attorney at law, for services performed under the previous appointment of this Court in the amount of $250.00 and such Guardian Ad Litem fee is ordered to be paid by the County of Lancaster, Nebraska.

DATED THIS 25th day of July, 1985.

/s/ Jeffre Cheuvront
District Judge

APPENDIX D

IN THE SUPREME COURT OF
THE STATE OF NEBRASKA

NO. 85 657

JERRY SHOECRAFT,

Plaintiff-Appellee

vs.

CATHOLIC SOCIAL SERVICES
BUREAU INCORPORATED, A Non-
Profit Nebraska Corporation;
JOHN DOE and MARY DOE;
DEPARTMENT OF SOCIAL SERVICES;
STATE OF NEBRASKA; and THE
ATTORNEY GENERAL OF THE STATE
OF NEBRASKA,

Defendant-Appellant

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Jerry D. Shoecraft, Appellee above named, hereby appeals to the Supreme Court of the United States from the final judgment of the Supreme Court of Nebraska reversing and remanding with directions to dismiss, entered in this action on April 25, 1986.

This appeal is taken pursuant to Title 28, United States Code, section 1257(2).

Dated: May 15, 1986.

JERRY D. SHOECRAFT,
Appellee

By /s/ Roger C. Lott, # 12511
500 Executive Building
521 South 14th St.
Lincoln, NE 68508
402-476-8005

CERTIFICATE OF SERVICE

I, Roger C. Lott, a member of the Bar of the Supreme Court of Nebraska, and the Supreme Court of the United States and Counsel of record for Jerry D. Shoecraft, Appellee herein, hereby certify that, pursuant to Rule 33, of the Rules of the Supreme Court, I served three copies of the foregoing Notice of Appeal to the Supreme Court of the United States and on each of the parties herein. as follows:

On Catholic Social Services Bureau, Appellant herein, by delivering the copies thereof to James M. Kelley, Attorney at Law and of record for Catholic Social Services Bureau, at his office located at Suite 313, 1033 "O" Street, Lincoln, NE 68508, on May 15, 1986.

On John Doe and Mary Doe, real and true names unknown, Appellants herein, by delivering the copies thereof to Patrick W. Healey, attorney of record for John Doe and Mary Doe, at his office located at 1141 "H" Street, Lincoln, NE 68501, on May 15, 1986.

On the Department of Social Services, State of Nebraska, Appellee herein, by delivering the copies thereof to Royce Harper, Attorney General's Office located in the Nebraska State Capitol, Lincoln, NE 69509 on May 15, 1986.

/s/ Roger C. Lott, # 12511
500 Executive Building
521 South 14th Street
Lincoln, NE 68508
402-476-8005

APPENDIX E

STATE OF NEBRASKA
DEPARTMENT OF SOCIAL SERVICES

IN THE INTEREST
OF
JUSTIN MICHAEL DAVIS

NOTICE OF INTENT
TO CLAIM PATERNITY

(Filed Feb. 28, 1985)

I, Jerry Duane Shoecraft, acknowledge and state that I am the father of Justin Michael Davis (to be) (who was) born to Sheri Davis on the 18th day of February, 1985. The mother resides at 1005 South Vine (Street), Grand Island (City), Ne (State), 68801 (Zip Code).

I acknowledge liability for contribution to the support and education of the child after its birth and for contribution to the pregnancy-related medical expenses of the mother.

DATED this 28th day of February, 1985.

/s/ Cheryl J. Frederick
Witness

/s/ Jerry D. Shoecraft
Signature of Claimant
313-72-2065
Social Security Number of Claimant
2406 "P" #1
(Street)
Lincoln, Ne 68503
(City) (State) (Zip Code)

APPENDIX F

Nebraska Statute Dealing With Termination of Parental Rights.

43-291. *Termination of parental rights; proceedings.* Facts may also be set forth in the original petition, a supplemental petition, or motion filed with the court alleging that grounds exist for the termination of parental rights. After a petition, a supplemental petition, or motion has been filed, the court shall cause to be endorsed on the summons and notice that the proceeding is one to terminate parental rights, shall set the time and place for the hearing, and shall cause summons and notice, with a copy of the petition, supplemental petition, or motion attached, to be given in the same manner as required in other cases before the juvenile court.

APPENDIX G

Examples of Other Statutes Providing Notice to Putative Fathers.

Georgia § 19-8-7

Provides for notice to putative fathers if his identity and location are known. If his identity and location are not known a reasonable attempt must be made to ascertain it. Once notified, he has thirty days to file a petition to legitimate the child.

Illinois 37 ¶ 705.9.4

Provides that any interested party including the persons attempting to adopt the child may request in writing that notice be served on a putative father that he has the right to such notice and that his parental rights potentially are to be terminated. The notice further indicates the procedure he needs to follow in order to protect those rights should he choose to.

Maine 19§ 532-C

Provides specifically for notice to a putative father of a mother's consent to adoption if his whereabouts are knows or if he has attempted to become involved in a family relationship with the child. If the putative father wishes to establish his parental rights after receiving notice he has twenty days to petition for the care and custody of his illegitimate child.

Maryland § 5-310

The provisions here indicate that a natural father must be notified and he is also required to consent to the adoption of his illegitimate child.

Nevada § 128.150

This statutory scheme specifically states that the purpose of the statute is to protect the interests of natural fathers. In so doing, inquiry is made of the mother to determine the identity of the natural father. Once the identity is established, notice of the proceeding is required.

APPENDIX H

FROM THE UNIFORM PARENTAGE ACT,
9A U.L.A. 579, 615 AND 616

§ 24. [Custodial Proceedings]

(a) If a mother relinquishes or proposes to relinquish for adoption a child who has (1) a presumed father under Section 4(a), (2) a father whose relationship to the child has been determined by a court, or (3) a father as to whom the child is a legitimate child under prior law of this State or under the law of another jurisdiction, the father shall be given notice of the adoption proceeding and have the rights provided under [the appropriate State statute] [the Revised Uniform Adoption Act], unless the father's relationship to the child has been previously terminated or determined by a court not to exist.

(b) If a mother relinquishes or proposes to relinquish for adoption a child who does not have (1) a presumed father under Section 4(a), (2) a father whose relationship to the child has been determined by a court, or (3) a father as to whom the child is a legitimate child under prior law of this State or under the law of another jurisdiction, or if a child otherwise becomes the subject of an adoption proceeding, the agency or person to whom the child has been or is to be relinquished, or the mother or the person having custody of the child, shall file a petition in the [ ] court to terminate the parental rights of the father, unless the father's relationship to the child has been previously terminated or determined not to exist by a court.

(c) In an effort to identify the natural father, the court shall cause inquiry to be made of the mother and any other appropriate person. The inquiry shall include the

following: whether the mother was married at the time of conception of the child or at any time thereafter; whether the mother was cohabiting with a man at the time of conception or birth of the child; whether the mother has received support payments or promises of support with respect to the child or in connection with her pregnancy; or whether any man has formally or informally acknowledged or declared his possible paternity of the child.

(d) If, after the inquiry, the natural father is identified to the satisfaction of the court, or if more than one man is identified as a possible father, each shall be given notice of the proceeding in accordance with Subsection (f). If any of them fails to appear or, if appearing, fails to claim custodial rights, his parental rights with reference to the child shall be terminated. If the natural father or a man representing himself to be the natural father, claims custodial rights, the court shall proceed to determine custodial rights.

(e) If, after the inquiry, the court is unable to identify the natural father or any possible natural father and no person has appeared claiming to be the natural father and claiming custodial rights, the court shall enter an order terminating the unknown natural father's parental rights with reference to the child. Subject to the disposition of an appeal, upon the expiration of [6 months] after an order terminating parental rights is issued under this subsection, the order cannot be questioned by any person, in any manner, or upon any ground, including fraud, misrepresentation, failure to give any required notice, or lack of jurisdiction of the parties or of the subject matter.

(f) Notice of the proceeding shall be given to every person identified as the natural father or a possible natural

father [in the manner appropriate under rules of civil procedure for the service of process in a civil action in this state, or] in any manner the court directs. Proof of giving the notice shall be filed with the court before the petition is heard. [If no person has been identified as the natural father or a possible father, the court, on the basis of all information available, shall determine whether publication or public posting of notice of the proceeding is likely to lead to identification and, if so, shall order publication or public posting at times and in places and manner it deems appropriate.]

Supreme Court, U.S.
FILED
AUG 14 1986
JOSEPH F. SPANIOL, JR.
CLERK

No. 86-56

In The
Supreme Court of the United States
October Term, 1986

JERRY D. SHOECRAFT,
Appellant,

v.

CATHOLIC SOCIAL SERVICES BUREAU, INCORPORATED, A NON-PROFIT NEBRASKA CORPORATION: JOHN AND MARY DOE; DEPARTMENT OF SOCIAL SERVICES, STATE OF NEBRASKA,
Appellees.

APPEAL FROM THE SUPREME COURT OF THE STATE OF NEBRASKA

MOTION OF APPELLEES TO DISMISS OR, IN THE ALTERNATIVE, TO AFFIRM

James M. Kelley
Suite 203, 202 So. 11th Street
Lincoln, Nebraska 68508
(402) 435-1500, for
Catholic Social Services Bureau, Incorporated, Appellee

Royce N. Harper
Assistant Attorney General
2115 State Capitol Building
Lincoln, Nebraska 68509
(402) 471-2682, for
Department of Social Service of Nebraska, Appellee

Patrick W. Healey
P.O. Box 83104
Lincoln, Nebraska 68508
(402) 476-2847, for
John and Mary Doe, Appellees

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
or call collect (402) 342-2831

TABLE OF CONTENTS

	Page
OPINIONS BELOW	1
CONSTITUTIONAL PROVISIONS & STATUTES	1
STATEMENT OF THE CASE	5
MOTION TO DISMISS	6
MOTION TO AFFIRM	7
CONCLUSION	10

TABLE OF AUTHORITIES

CASES:

	Pages
Caban v. Mohammed, 441 U.S. 380 (1979)	7, 8
DeFunis v. Odegaard, 416 U.S. 312 (1974)	6
Franks v. Bowman Transportation Co., Inc., 424 U.S. 747 (1976)	6
Herb v. Pitcairn, 324 U.S. 117 (1954)	7
New York Times v. Jascalevich, 439 U.S. 1317 (1978)	10
Quilloin v. Walcott, 434 U.S. 246 (1978)	7
Weinstein v. Bradford, 423 U.S. 149 (1975)	6

CONSTITUTION:

U.S. Const., art. III, § 2	1, 6
U.S. Const. amend XIV, § I	2

OTHER AUTHORITIES:

Nebraska Statutes, Section 43-104.01	2, 10
Nebraska Statutes, Section 43-104.02	2, 6
Nebraska Statutes, Section 43-104.03	3
Nebraska Statutes, Section 43-104.04	3
Nebraska Statutes, Section 43-104.05	3
Nebraska Statutes, Section 43-104.06	4, 5, 6, 10

Pursuant to the provisions of Rule 16 of this Court all appellees move this court for an order dismissing appellant's appeal or; in the alternative, for an order affirming the decision of the Supreme Court of the State of Nebraska rendered April 25, 1986.

———o———

OPINIONS BELOW

The opinion of the Supreme Court of the State of Nebraska is found at 222 Neb. 574, — N.W.2d — (1986), and accurately is reproduced at Appendix A, p. App. 1 of appellant's jurisdictional statement. The decision of the District Court of Lancaster County, Nebraska, reversed by the Supreme Court of the State of Nebraska, is unreported. It is, however, accurately reproduced at Appendix C, p. App. 18 of appellant's jurisdictional statement.

———o———

CONSTITUTIONAL PROVISIONS & STATUTES

U.S. Const., art. III, § 2:

> Section 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and

Citizens of another State;—between Citizens of different States,—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such regulations as the Congress shall make. . . .

U.S. Const. amend XIV, § I:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Nebraska Statutes, Sections 43-104.01 to 43-104.06, R.S. (Reissue, 1984):

43-104.01. *Adoption; act; applicability.* Section 43-104 shall apply to any adoption action pending in any court on March 1, 1971, which has not proceeded to final judgment.

43-104.02. *Adoption; child born out of wedlock; relinquishment or consent requirements; paternity claim; notice; contents.* (1) Relinquishment or consent for the purpose of adoption given only by a mother of a child born out of wedlock pursuant to section 43-104 shall be sufficient to place the child for adoption and the rights of any alleged father shall not be recognized thereafter in any court unless the person claiming to be the father of the child has

filed with the Department of Social Services on forms provided by the department within five days after the birth of such child, a notice of intent to claim paternity.

(2) The notice shall contain the claimant's name and address, the name and last-known address of the mother, and the month and year of the birth or expected birth of the child.

43-104.03. *Paternity claim; notice; to whom given; effect.* Within three days after the filing of a notice to claim paternity, the Director of Social Services shall cause a certified copy of such notice to be mailed by certified mail to (1) the mother or prospective mother of such child at the last-known address shown on the notice of intent to claim paternity, or (2) an agent specifically designated in writing by the mother or prospective mother, to receive such notice. The notice shall be admissible in any action for paternity under sections 43-1401 to 43-1413, and shall estop the claimant from denying his paternity of such child thereafter and shall contain language that he acknowledges liability for contribution to the support and education of the child after its birth and for contribution to the pregnancy-related medical expenses of the mother.

43-104.04 *Paternity claim; failure to file notice; effect.* If a notice of paternity is not filed within five days, the mother of a child born out of wedlock or an agent specifically designated in writing by the mother may request, and the Department of Social Services shall supply, a certificate that no notice of intent to claim paternity has been filed with the department and the filing of such certificate pursuant to section 43-102 shall eliminate the need or necessity of a consent or relinquishment for adoption by the natural father of such child.

43-104.05. *Paternity claim; notice; filed; petition for adjudication of paternity; hearing.* If a

notice of intent to claim paternity is filed within five days ofter the birth of such child, either the claimant-father, the mother, or her agent specifically designated in writing may file a petition in the county court in the county where such child is a resident for an adjudication of the claim of paternity. After the filing of such petition, the court shall set a hearing date upon proper notice to the parties not less than ten nor more than twenty days after such filing. If the mother contests the claim of paternity, the court shall take such testimony as shall enable it to determine the facts.

43-104.06. *Paternity claim; contest by claimant; court; findings; relinquishment of child to placement agency; when.* (1) If the claimant seeks to oppose any proposed relinquishment of a child by the mother and requests custody of the child, the court shall inquire into the fitness of the claimant, his ability to properly care for the child, and whether the best interests of the child will be served by granting custody to the claimant. Only upon the appointment of a guardian ad litem for the child, and a finding that the claimant is a fit person, is able to properly care for the child, and that the child's best interests will be served by granting custody to the claimant, shall custody be granted to the claimant.

(2) Upon relinquishment by the mother to a child placement agency licensed by the State of Nebraska, or upon a finding that the child's best interests would not be served by granting custody to the claimant, together with the recommendation by the guardian ad litem, and a finding that termination of the rights of the mother and the father is in the best interests of the child, the court shall terminate the rights of the mother and father and confer such rights upon the licensed child placement agency to whom the relinquishment has been given.

———o———

STATEMENT OF THE CASE

The procedural history of the instant controversy as set forth in appellant's statement of the case generally is accurate. As to the "facts" as set forth by appellant there should be added that except for his expressed desire to assume parental responsibility for his child, appellant did nothing to foster that relationship. He did not visit the child's mother during her pregnancy after she moved from Lincoln to Grand Island in July of 1984. He contributed not a cent to the mother's or the child's hospital and other medical expenses; he paid no other expenses; and he even refused to return a medical questionnaire sent to him on behalf of the Catholic Social Services Bureau. The questionnaire was sent to him before the birth of the child and requested, for adoption placement purposes, information as to the appellant's and his family's medical history.

Also missing from appellant's statement of the case is the disclosure that subsequent to the ruling of the state District Court, and during the time that the Supreme Court of the State of Nebraska had the issues under submission, an evidentiary hearing was held in the County Court of Lancaster County Nebraska pursuant to Nebraska Statutes, Section 43-104.06(1), R.S. (Reissue, 1984), as to appellant's fitness to have custody of the child. The Section 43-104.06(1) proceedings were dismissed, upon motion, at the conclusion of appellant's case-in-chief.

———o———

MOTION TO DISMISS

Appellees move for an order dismissing appellant's appeal on the basis that the issues between him and appellees are moot. Even if appellant's cause is successful in this Court to the extent that it is decided that the five-day filing requirement is unconstitutional, no benefit can obtain to appellant.

Appellant has had in the County Court of Lancaster County, Nebraska, the full benefit of the state District Court's ruling that Nebraska Statutes, Section 43-104.02(1), R.S. (Reissue, 1984) is unconstitutional. Before the Nebraska Supreme Court overturned the District Court's ruling appellant's fitness to have custody of his child fully was litigated pursuant to Nebraska Statutes, Section 43-104.06(1), R.S. (Reissue, 1984). He lost, he did not appeal that decision, and that decision now is final. Hence, there is no case on controversy between appellant and appellees wherein appellant has a personal stake in the outcome of the case. Dismissal is required. U.S. Const. art. III, § 2. *Franks v. Bowman Transportation Co., Inc.*, 424 U.S. 747 (1976); *DeFunis v. Odegaard*, 416 U.S. 312 (1974).

This is not a case governed by the rule in *Weinstein v. Bradford*, 423 U.S. 149 (1975), where a moot issue was classed as one where there " . . . was a reasonable expectation that the same party would be subjected to the same action again." 423 U.S. at 149. Nothing this Court may do, as a result of appellant's appeal, will effect Mr. Shoecraft's right to his child or the adoption thereof by Mr. and Mrs. Doe.

MOTION TO AFFIRM

In the alternative to their motion to dismiss, appellees move for an order affirming the judgment of the Supreme Court of the State of Nebraska. The Nebraska Court fully, fairly and accurately considered appellant's constitutional claims and determined that a ruling as to the statute's constitutionality in the abstract was not required because under the particular surrounding facts, the five-day notice requirement as applied to appellant was not unconstitutional. 222 Neb. 574, 580. The Nebraska Court fully recognized the constitutional principles involved and based its decision on settled federal constitutional principles as interpreted by this Court in *Caban v. Mohammed*, 441 U.S. 380 (1979), and *Quilloin v. Walcott*, 434 U.S. 246 (1978).

In addition to the fact that the Nebraska Court correctly decided the controversy from the standpoint of federal constitutional doctrine, its decision is based on independent non-federal grounds, that is, determinations that appellant's conduct, vis-a-vis has child and the mother, and the facts of the pregnancy and birth as he knew them to be, took him out of the category of litigants who could benefit by a finding that the five-day notice requirement was unconstitutional. *See, Herb v. Pitcairn*, 324 U.S. 117 (1954).

> The statutory scheme here requires the father of a child born out of wedlock to declare himself as such within 5 days after the birth of the child and to assume the financial obligations of that status. The Nebraska statutory scheme does not provide for notification to the father of the birth of the child.

> That omission might well, in a particular case, render constitutionally suspect as violative of due process the termination of the father's rights. See *Caban v. Mohammed, supra.* However, the facts in this case clearly demonstrate that the appellee father knew of the pregnancy as soon as the condition could be medically verified. He knew the whereabouts of the mother and was advised of the birth on the date of occurrence. Except for conversations relating to the disposition of the child, no manifestation of his intention to assert rights was made known. The record is completely devoid of any financial contribution to the expenses of maintainance during pregnancy or of other medical expenses. The lack of a provision for notice in the statutes does not render the scheme unconstitutional as to the appellee father.

222 Neb. 574, 578.

The Nebraska Court then went on to balance the competing interests among appellant, Miss Davis, the prospective adoptive parents, the adoption agency and the state in general.

> The Legislature, in the passage of §§ 43-104.02 et seq., was concerned about the problems facing an unwed mother as to the retention of custody of the child or the relinquishment of the child to an agency for placement in an appropriate home. The 5-day period after birth was selected, in the words of the introducer, "primarily because this is pretty much a standard length of time that a child and the mother might be kept in the hospital anyway." Judiciary Committee Hearing, L.B. 224, 84th Leg., 1st Sess. 2 (Jan. 29, 1975) (statement of Sen. Anderson). An unwed mother would then know at the time she is likely to be released from the hospital whether the father will step forward, claim his own flesh and blood, and assume the responsibilities he biologically

created. If not, the mother may then make the painful decision alone and not be left in the terrible limbo of growing attachment and love for the child, awaiting either the outcome of a judicial proceeding with its attendant notoriety or decision of the amorous Hamlet in the wings, pondering whether he should assume his responsibility.

It is further obvious that the Legislature exercised a judgment favoring adoption of children of unwed couples as soon as possible after birth, concluding that the placement of the child in a home with persons anxious to have, love, and rear the child is to be preferred over a battleground where the mother must either depend on social agency support or on the outcome of a judicial support proceeding to compel the father to assume his responsibility.

The Legislature also considered (in view of the extended testimony) the views of the licensed child placement agencies that rapid determination of the rights, if any, of an unwed father to object to a relinquishment and subsequent adoption is in the best interests of the child, the relinquishing mother, and of the prospective adoptive parents. That prospective adoptive parents would assume custody of a newborn with the prospect of later having to surrender the child is questionable. That the Legislature accomplished those goals with the passage of the act is clear. It is further clear that the problems of unwed births and adoptions are legitimate concerns of the Legislature.

In consideration of the countervailing claims of this appellee father, we must note that, until after the birth, he exhibited (at least financially) no responsibility for the child or the mother. This is not a case where he lived with the child and nurtured and supported it and the mother. Thus, his rights, as Justice Marshall observed in *Quilloin v. Walcott*, 434 U.S. 246, 256, 98 S. Ct. 549, 54 L. Ed. 2d 511 (1978), "are readily distinguishable from those of a separated or divorced

> father, and [we] accordingly believe that the State could permissibly give appellant less veto authority than it provides to a married father."
>
> We are not impressed with the excuse that the appellee father did not know of the 5-day limitation. In this matter he is presumed, as are all citizens, to know the law. Statutes of limitation bar evenly the claims of the wary and the unwary and the just.

222 Neb. 574, 579-580.

The Nebraska Legislature acted responsibly and constitutionally in its enactment of Sections 43-104.01 through 43-106. The Supreme Court of Nebraska properly interpreted the act's provisions. On both federal constitutional principles and upon the other non-federal grounds used by the Nebraska Court for its decision, an order of affirmance should issue. *New York Times v. Jascalevich*, 439 U.S. 1317 (1978).

CONCLUSION

For the reasons and upon the authority set forth above, Mr. Shoecraft's appeal must be dismissed. In the alternative the decision of the Supreme Court of the State of Nebraska must be affirmed.

Respectfully submitted,

James M. Kelley
Suite 203, 202 So. 11th Street
Lincoln, Nebraska 68508
(402) 435-1500, for
Catholic Social Services Bureau, Incorporated, Appellee

Royce N. Harper
Assistant Attorney General
2115 State Capitol Building
Lincoln, Nebraska 68509
(402) 471-2682, for
Department of Social Service of Nebraska, Appellee

Patrick W. Healey
P.O. Box 83104
Lincoln, Nebraska 68508
(402) 476-2847, for
John and Mary Doe, Appellees